

EXHIBIT A

<p style="text-align: right;">Page 38</p> <p>1 MS. HURST: Objection, form, beyond 2 the scope, calls for improper expert testimony. 3 MR. DeCLERCK: I'll join in these 4 objections. 5 A. What it means is it would implement 6 the specifications for Java. 7 BY MR. BAYLEY: 8 Q. And by "implement," you mean write 9 source code consistent with the specifications 10 for Java? 11 A. Yes. 12 Q. Has IBM ever used source code 13 derived from the Apache Harmony Project in its 14 products? 15 A. Yes. 16 Q. Which -- strike that. Which 17 products has IBM used Apache Harmony code in 18 its products? 19 MS. HURST: Objection, form. 20 A. The IBM Java SE SDK. 21 BY MR. BAYLEY: 22 Q. Any other products besides the IBM 23 SE SDK? 24 A. No. 25 Q. And what is the IBM SE SDK?</p>	<p style="text-align: right;">Page 40</p> <p>1 BY MR. BAYLEY: 2 Q. What other products besides those 3 products use the IBM SE SDK? 4 A. I'd have to consult the list. It's 5 a long list. 6 BY MR. BAYLEY: 7 Q. So sitting here today, can you think 8 of any other IBM products that use the IBM SE 9 SDK? 10 A. Yes. I have to give you -- I have 11 to get the right names. 12 The Rational products, which are 13 Eclipse based, all are built on the IBM Java. 14 Q. Any other products that use the IBM 15 SE SDK that you can think of sitting here 16 today? 17 MS. HURST: Objection, form. 18 A. No. 19 BY MR. BAYLEY: 20 Q. You mentioned earlier that Apache 21 Harmony contains implementations of Java class 22 libraries. Do you remember that? 23 MS. HURST: Objection, form, beyond 24 the scope and improper expert testimony. 25 A. Yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 A. It's an implementation of Java SE, 2 which is then used by other IBM products that 3 are written in Java. 4 Q. Okay, and what are the other IBM 5 products that use the IBM SE SDK? 6 MS. HURST: Objection, form. 7 A. There are many. Application Server 8 is one of them. 9 BY MR. BAYLEY: 10 Q. Any other IBM products that use the 11 IBM SE SDK that you can think of sitting here 12 today? 13 A. There's lots. 14 Q. Can you give me a list? 15 MS. HURST: Objection, form. 16 A. Off the top of my head? Lotus Notes 17 was using it. IBM Commerce. There's lots and 18 lots of products. 19 BY MR. BAYLEY: 20 Q. Anything else -- strike that. 21 Any other products besides 22 WebSphere, Lotus Notes and IBM Commerce that 23 use the IBM SE SDK? 24 MS. HURST: Objection, form. 25 A. Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 BY MR. BAYLEY: 2 Q. Okay. Are you familiar with the 3 concept of Java API packages? 4 MS. HURST: Same objections. 5 MR. DeCLERCK: Join. 6 A. Yes. 7 BY MR. BAYLEY: 8 Q. Okay. Is there a difference in your 9 mind between Java API packages and Java class 10 libraries? 11 MS. HURST: Objection, form, beyond 12 the scope, improper expert testimony. 13 MR. DeCLERCK: I'll join. 14 A. I don't know how to answer the 15 question. 16 BY MR. BAYLEY: 17 Q. Is there a difference in your mind 18 between Java class libraries and Java API 19 packages? 20 MS. HURST: Same objections. 21 A. One is a generic term. Java class 22 libraries means a collection of the Java API 23 packages, so that would be the difference, I 24 guess. 25 BY MR. BAYLEY:</p>

<p style="text-align: right;">Page 82</p> <p>1 using IBM Java 6, are these commercial 2 products? 3 A. Yes. 4 Q. Are there any of these hundreds of 5 products that IBM has using IBM Java 6 and Java 6 7 not commercial products that you're aware of? 7 A. I'd have to say yes. Internal use 8 wouldn't count as a commercial product, but we 9 would use it internally for our own tools and 10 things like that, so that would be a yes, but I 11 can't really list any. 12 Q. Okay. The WebSphere Application 13 Server, that's a commercial product that IBM 14 puts out? 15 A. Yes. 16 Q. How does IBM derive revenue from 17 WebSphere Application Server? 18 A. We sell it. 19 MR. DeCLERCK: Object as to the 20 scope. But you can answer on your personal 21 knowledge. 22 A. We sell it for -- I have no idea how 23 much it costs, but we sell it, and then we 24 charge additional service and support as an 25 ongoing fee for maintenance and patches and</p>	<p style="text-align: right;">Page 84</p> <p>1 A. No. We sell it. That's it, pretty 2 much. 3 Q. Okay. What about Lotus Notes? Is 4 that a commercial product for IBM? 5 A. Yes. 6 Q. And how does IBM derive revenue from 7 Lotus Notes? 8 A. Again, we sell it and license it to 9 customers and they pay us for that and support 10 and that kind of thing. 11 Q. Are there any other additional ways 12 that IBM derives revenue from Lotus Notes? 13 A. Not that I'm aware of. 14 Q. Okay. What about IBM Commerce? Is 15 that a commercial product? 16 A. Yes. 17 Q. What are the ways that IBM derives 18 revenue from IBM Commerce? 19 A. Again, we sell it and service it. 20 Q. Any other revenue -- strike that. 21 Any other ways that IBM derives revenue from 22 IBM Commerce? 23 A. Not that I'm aware of. 24 Q. And the Rational tools that we were 25 discussing, are those commercial products?</p>
<p style="text-align: right;">Page 83</p> <p>1 things like that. 2 BY MR. BAYLEY: 3 Q. Does IBM derive revenues in any 4 other ways from the WebSphere Application 5 Server? 6 MR. DeCLERCK: Same objection. 7 A. Yes. We sell services, and there's 8 tons of ways that we make money there, but I'm 9 not involved in those day-to-day things, so I 10 don't know. 11 BY MR. BAYLEY: 12 Q. Are there any that you know that 13 you're aware of here today? 14 A. Yes, so example, services, if you're 15 having problems with performance, some services 16 teams will come to your site and help you 17 performance tune it. Those are individuals who 18 are expert in performance. That would be a 19 service that you would pay for, having people 20 on site. So that would be an example of the 21 WebSphere services team doing that kind of 22 thing. 23 Q. Okay. Any other examples of revenue 24 sources from IBM WebSphere Application Server 25 that we haven't already discussed?</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Yes. 2 Q. And how does IBM derive revenue from 3 those products? 4 A. Again, we sell them and charge for 5 support and those things. 6 Q. So you sell them and you license 7 service around those products? 8 A. Yes, yeah. 9 MS. HURST: I'm going to interpose 10 an objection that the line of testimony about 11 commercial products is beyond the scope. 12 BY MR. BAYLEY: 13 Q. Can I have you refer back to what's 14 marked as Exhibit 1409. This is the subpoena. 15 A. Yep. 16 Q. Can I have you turn to the same page 17 I had you look at before. This one is 18 documents and things requested at the top. 19 A. Yep. 20 Q. And then again under deposition 21 topics it says IBM's use of code derived from 22 Apache Harmony project and commercial products 23 including but not limited to WebSphere. 24 WebSphere, you said that's a brand? 25 A. Yeah, I took that here as WebSphere</p>

<p style="text-align: right;">Page 98</p> <p>1 A. No, no, no. They don't pay him or 2 anything. It's us paying a salary and he works 3 on Apache Harmony as the lead. 4 Q. Have you ever been a vice-president 5 of the Apache Software Foundation under this 6 rubric? 7 A. No. 8 Q. How many IBM employees were 9 considered vice-presidents of the Apache 10 Software Foundation around this time? 11 MS. HURST: Objection, form, scope. 12 A. I have no idea. 13 MS. HURST: I have a continuing 14 objection to all of this questioning about 15 Apache as beyond the scope. 16 BY MR. BAYLEY: 17 Q. If I could have you refer, staying 18 on this attachment to the subpoena, 1409, could 19 I have you refer down to the paragraph 20 beginning "this is not your father's runtime." 21 A. Yes. 22 Q. And it says here that Mr. Ellison 23 cited the presentation that Apache Harmony is a 24 free open source implementation of Java SE 25 standard edition. Is that an accurate</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Do you see that? Here the article 2 says: "According to Hayman, Apache Harmony is 3 in broad commercial use." Is that an accurate 4 statement? 5 MS. HURST: Objection. Beyond the 6 scope, improper expert testimony. 7 A. I would have to say no at the time 8 of the statement. 9 BY MR. BAYLEY: 10 Q. Okay, and why do you say that? 11 A. The plan was to use all of Harmony 12 at that time, and so by the time -- you know, 13 shortly after this we would have had a bigger 14 release with more Harmony code. But between 15 that time and when we released Java 7, we 16 changed where we were doing our open source 17 work from Harmony to OpenJDK, which is why -- 18 so at the time he didn't know this because it 19 hadn't happened yet. And then -- so we stopped 20 using Harmony code and reduced our way -- and 21 reduced the Harmony code and started using 22 OpenJDK code. 23 Q. That's a fair point. Let me -- 24 A. So the intent was to be majority 25 Harmony code, but then things changed after</p>
<p style="text-align: right;">Page 99</p> <p>1 statement? 2 MS. HURST: Objection, 3 mischaracterizing the document, form, beyond 4 the scope. 5 MR. DeCLERCK: I'll object as well. 6 A. It's a description of the goal, free 7 open source implementation. It's not his 8 quote, though. The quote is: "This is not 9 your father's runtime." 10 BY MR. BAYLEY: 11 Q. That's a good point. The article, I 12 should say, describes Apache Harmony as a free 13 open source implementation of Java SE. Is that 14 an accurate description in your mind? 15 A. When completed, it would be. But at 16 the time it was not a full implementation or 17 complete, so it was -- that's why I said it's a 18 fair description of the goal for the Apache 19 project, which was to create a free and open 20 source implementation of SE. 21 Q. Okay. And can I have you skip a few 22 paragraphs down where it says the Apache 23 Harmony project is more than an exercise in 24 Java Runtime evasion. 25 A. Mm-hm.</p>	<p style="text-align: right;">Page 101</p> <p>1 this statement, but he was talking about 2 something that was going to happen. He was a 3 little bit of leading. 4 Q. So as of 2009, so staying in the 5 2009 time frame, I think you testified earlier 6 that Java 6 had already been released, the IBM 7 Java 6 had already been released and was 8 already included in a number of IBM products? 9 Is that correct? 10 A. Correct. 11 Q. So as of 2009 was it a fair 12 statement that Apache Harmony is in broad 13 commercial use as of 2009? 14 A. The packages we used from Harmony, 15 yes. But it was a small portion of Java 6. 16 Q. Okay. 17 A. So . . . 18 Q. So certainly the portions of the 19 Apache Harmony libraries that IBM was using 20 were in broad commercial use as of 2009? 21 MS. HURST: Objection, form, scope. 22 A. Yes, but the way his statement was, 23 it made it sound like all of Harmony was used. 24 In reality we were using a small subset with 25 the intent to use more, but at the time we</p>

<p style="text-align: right;">Page 106</p> <p>1 MS. HURST: Objection, scope, form. 2 A. The only way I would know is this 3 blog entry I read because it's a very highly 4 competitive thing, benchmarking, so it came to 5 our attention that there was some code from 6 Harmony there. 7 BY MR. BAYLEY: 8 Q. Do you remember the name of the 9 blog? 10 A. No. 11 Q. Do you remember the author of the 12 blog? 13 A. Dave Augustine. I don't know how to 14 spell it. 15 Q. Dave Augustine? 16 A. Yeah, like August-ine, I guess. 17 Q. Was this an industry blog or a 18 company blog? 19 A. Probably a company blog. 20 Q. And what company, do you know? 21 A. Would have been Sun at the time. 22 Q. So this was a blog posted on Sun's 23 website? 24 A. Yes. 25 Q. Okay. And do you remember roughly</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Do you remember who you spoke with 2 specifically? 3 A. Probably mentioned it to Mark 4 Reinhold, but I can't be sure. 5 Q. Do you remember anyone else that you 6 remember speaking to about Apache Harmony at 7 Oracle? 8 MS. HURST: Same objections. 9 A. Not really, just that when we 10 switched from Harmony to OpenJDK it was a big 11 pain in my butt, so I was telling people I've 12 got to move all this code, it's going to take 13 me time. That's the level of discussion. 14 BY MR. BAYLEY: 15 Q. Why was it a pain if your butt to 16 move the code from Apache Harmony to OpenJDK? 17 A. Whenever you change code you have to 18 test it. Things go wrong, so whenever you 19 change the code in anything, things break, so 20 you have to -- it's just work. It's more work. 21 Q. Do you know why IBM switched from 22 Apache Harmony to OpenJDK? 23 MR. DeCLERCK: Objection. 24 A. Yes. 25 BY MR. BAYLEY:</p>
<p style="text-align: right;">Page 107</p> <p>1 what year you saw this blog post? 2 A. No. It's a long time ago. 3 Q. But before Oracle's acquisition of 4 Sun? 5 A. I believe so. I believe so. You'd 6 have to find it and look at it. 7 Q. Have you ever spoken with anyone at 8 Sun about Apache's -- strike that. Have you 9 ever spoken with anyone at Sun about IBM's use 10 of Apache Harmony code in the IBM Java SDK? 11 MS. HURST: Objection, form, scope. 12 A. No. 13 BY MR. BAYLEY: 14 Q. Have you ever spoken to anyone at 15 Oracle about IBM's use of the Apache Harmony 16 code in the IBM Java SDK? 17 MS. HURST: Objection, form, scope. 18 MR. DeCLERCK: I'll object as well. 19 A. Over the years, yes. 20 BY MR. BAYLEY: 21 Q. Who have you spoken to about that? 22 A. I don't know. Various people. I'd 23 have to think, but was it substantive? It was 24 just, oh, yeah, we used to use Harmony. Now we 25 use OpenJDK.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. And why was that? 2 A. So that we could work on an open 3 source implementation to drive innovation, 4 common up our resources, those kinds of things. 5 Can I go back to this page? 6 Q. You want to refer to something in 7 the exhibit? 8 A. Sorry, I'm an idiot. 1410, on this 9 history. Sun ships Harmony tree map. 10 Q. Is that the reference of the Sun 11 using Harmony? 12 A. Yeah, that's the reference. 13 Q. Okay. 14 A. So . . . I didn't realize it was on 15 here. I stopped reading at 2008. Sorry. 16 Q. In your role as Java CTO, you're 17 responsible for creating source code? 18 A. Not for a while, but yes. 19 Q. Do you supervise the creation of 20 source code at IBM in your role as Java CTO? 21 A. Yes. 22 Q. Did you collect any IBM source code 23 in response to this subpoena? 24 A. No. 25 Q. Are you aware of any collection of</p>

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set
6 forth; that any witnesses in the foregoing
7 proceedings, prior to testifying, were placed
8 under oath; that a verbatim record of the
9 proceedings was made by me using machine
10 shorthand which was thereafter transcribed
11 under my direction; further, that the foregoing
12 is an accurate transcription thereof.

13 I further certify that I am neither
14 financially interested in the action nor a
15 relative or employee of any attorney or any of
16 the parties.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19
20 Dated: December 23, 2015

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23 Michelle Anderson DH

24 MICHELLE ANDERSON

25 CSR (A), RPR, CRR, CCP